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August 19, 1994

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: Petition for Reconsideration of Fifth Report and Order in PP Docket No. 93-253.

Dear Mr. Caton:

Transmitted on behalf of MasTec, Inc. is an original and four copies of the above referenced Petition for Reconsideration.

Should you have any questions regarding this filing, please contact the undersigned.

Sincerely,

Karsten Amlie
Counsel for
MasTec, Inc.

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of Implementation of Section 309(j) of the Communications Act-Competitive Bidding	))))))	PP Docket No. 93-253

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To: The Commission

PETITION FOR RECONSIDERATION OF FIFTH REPORT AND ORDER

1. Pursuant to FCC Rule §1.1429, MasTec, Inc. asks that the Commission reconsider the Fifth Report and Order PP Docket No. 93-253, FCC 94-178, released July 15, 1994. Therein the Commission adopted competitive bidding procedures for licenses to provide personal communication services on the 2 GHz band ("broadband PCS.")

2. The specific procedures adopted in the Fifth Report and Order included a number of rules pursuant to a Congressional directive ordering the Commission to ensure that small businesses, minority owned businesses and businesses owned by women (collectively "designated entities") have the opportunity to participate in PCS. So that a wide variety of applicants could have the opportunity to bid for licenses in the PCS service, the Fifth Report and Order set aside two blocks of spectrum for designated entity bidding purposes.

3. Initially, the Commission tentatively ruled that only small businesses and minority and/or female owned businesses could bid for the licenses in these two blocks. Subsequently, the Fifth

Report and Order established a scheme whereby the blocks were set aside for "entrepreneurs." The licenses within the "Entrepreneur blocks" can only be bid upon by those applicants which have had annual gross revenues of less than $125 million within the past two years and which have no more than $500 million in assets.

4. Construction of PCS systems promises to be extremely capital intensive. Moreover, construction of these systems must meet the Commission's build out schedule. Thus, it will be very difficult for a small business by itself to construct, let alone acquire, a PCS license. Accordingly, the Fifth Report and Order also established a scheme whereby passive investors with very deep pockets can assist minority businesses with less than $125 million in gross revenues and $500 million in assets. Clearly, without these financing mechanisms and other preferences contained in the Fifth Report and Order, small businesses and "entrepreneurial" minority and female owned businesses would not be able to afford PCS licenses.

5. Unfortunately, even with the financing mechanisms and preferences of the Fifth Report and Order opportunities for minority owned companies will be extremely limited in broadband PCS. This is because the Fifth Report and Order established its basis for "entrepreneur block" eligibility upon a net worth/net revenue definition which is overly restrictive and which will exclude those minority businesses which can best survive and succeed in the competitive PCS marketplace. In balancing the desire to exclude large companies which could outbid the designated entities against the economic realities of developing PCS, the

Commission's financial cap unrealistically favors the former.

6. The $125 million annual gross revenue/$500 million asset caps were apparently based loosely upon the Commission's local exchange carrier categories.[1] Accordingly, the cap's figures are taken from an industry which is a regulated monopoly with a guaranteed rate of return. As the Commission's studies have found, minorities have been shut out of such industries:

> "...only one half of one percent of the telecommunications firms in the country were minority owned. The study also identified only 15 minority cable operators and 11 minority firms engaged in the delivery of cellular, specialized mobile radio, radio paging or messaging services in the United States." Fifth Report and Order, FCC 93-253, released July 15, 1994, paragraph 107.

With such an obvious exclusion from the telecommunications industry, the annual revenues of minority businesses should not be expected to fit easily into a framework based upon that industry's standards. Rather, the Commission should modify the Fifth Report and Order's designated entity criteria to include those minority businesses which are still small enough that they could not compete outside of the entrepreneur blocks, but at the same time are too large to qualify to bid on the designated entity's blocks.

7. In capping the annual gross revenues of minority businesses

[1] These figures correspond roughly to a Tier 2 Local Exchange Carrier. Fifth Report and Order at para 123, footnote 99.

qualified to bid on the designated entity frequency blocks, the Fifth Report and Order irrationally discriminates against those minority businesses that provide the greatest volume of goods and services to the public. An annual gross revenue test is misleading. The gross revenue of a business in one industry will not translate the same information about a company in another industry. Annual gross revenue is not a measure of a business' profit. It tells the Commission nothing about the money available to a business to bid on PCS licenses. Indeed, it tells the Commission nothing about the size of a business. All it says is that, regardless of a business' size, that business has provided goods and services valued at a certain gross annual amount.

8. A minority owned business with less than $500 million in assets, but having more than $125 million in gross revenues is obviously an efficient and well-managed business. Successful minority businesses should not be precluded from participation in PCS when it is these companies which will be the ones best suited to bring PCS to America. MasTec, Inc. submits that the Commission should include this class of minority business within the eligible designated entities by creating a separate category of designated entity for minority businesses which have between $125 and $500 million in gross revenues and have less than $500 million in assets.[2]

9. The companies which will be eligible for this new "entrepreneurial minority" category should be afforded at least two

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[2] See Exhibit 1 for a demonstrative chart.

of the preferences afforded the other designated entities. While bidding credits may not be necessary for these companies, tax certificates and installment payments are just as crucial for these minority businesses as they are for the minority businesses with less annual gross revenues. "Entrepreneurial minority" companies should be granted tax certificates in order to overcome the obstacles minorities face in accessing capital. Such tax certificates are necessary to attract capital to finance the acquisition of PCS licenses by minority businesses. Additionally, the difficulties faced by minority controlled entities in obtaining financing will be somewhat ameliorated by allowing those businesses to pay for their licenses in installments. Accordingly, MasTec, Inc. submits that "entrepreneurial minorities" also be allowed to pay for their licenses on an installment plan.

10. In addition to the establishment of the Entrepreneurial blocks and the various preferences aimed at assisting minorities finance PCS, the Fifth Report and Order also instituted a set of affiliation rules. These rules provide that the gross revenues, assets and personal net worth of affiliates of the applicant are attributed toward the applicant. Essentially, these rules are intended to prevent applicants which do not satisfy the eligibility requirements of the Entrepreneur blocks from receiving benefits and preferences targeted to smaller entities. In a recent action, on the Commission's own motion, entities owned and controlled by Indian tribes or Alaska Regional or Village Corporations were

exempt from the affiliation rules.[3]

11. The Order on Reconsideration establishing this exemption states a desire on the part of the Commission to mirror the Small Business Administration's affiliation rules and other Federal laws which have, pursuant to Congress' directive, deemed Indian tribes and Alaska Native Corporations to be economically disadvantaged. However, the Fifth Report and Order goes to great length to explain the economic disadvantages of all minorities. Minorities of Black, Hispanic, and Asiatic extraction remain restrained by the Commission's financial caps concerning their affiliations, but now those American Indian and American Eskimo applicants which are controlled by or are otherwise affiliated with tribes or Native Corporations have an advantage over other minorities. Essentially, the Order on Reconsideration permits two specific minority groups to bid on the "designated entity" PCS frequencies without regard to how wealthy affiliated Indian and Eskimo entities can be. By removing the affiliation limitation on these groups, meaningful opportunities for other minorities will be usurped through imbalanced bidding power in the Entrepreneur blocks for certain licenses.

12. Traditionally, the Commission has not discriminated among minorities by giving preferential treatment to a specific minority class. Its minority policies have applied across the board to all disadvantaged minorities. PCS should be no different. Recognizing the difficulty all minorities face in accessing capital and

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[3] Order on Reconsideration PP Docket No. 93-253, FCC 94-217, released August 15, 1994.

abolishing the affiliation rules for all minorities would ensure that minority owned corporations would be major players in the competitive PCS marketplace, promoting Congress' objective.

13. The Fifth Report and Order affords smaller minority businesses a good opportunity to become involved with the establishment of PCS in this country. Yet, it excludes that segment of minority business which is well situated to acquire and build out a PCS license. Establishing a designated entity category wherein the gross annual income cap is raised for minority owned and controlled businesses would ensure opportunity and success for minority businesses in the PCS industry. Additionally, relaxing the affiliation requirements for all minorities will guarantee that Congress' objective of providing effective and long-term economic opportunities for minority owned entities in broadband PCS is met.

14. In view of the forgoing, MasTec, Inc. hereby requests the Commission to reconsider its Fifth Report and Order and adopt those modifications detailed herein.

Respectfully submitted,

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August 19, 1994

EXHIBIT A

NEW "ENTREPRENEURIAL MINORITY" BUSINESS CATEGORY

	Bidding Credits	**Installment Payments**	**Tax Certificates for Investors**
Entrepreneurial Businesses ($40 MM - $125 MM in revenue and less than $500 MM in total sssets)	0	Interest only for 1 year; rate equal to 10-year Treasury note plus 2.5%; (for businesses with revenues greater than $75 MM, available only in top 50 markets)	No
Small Businesses (less than $40 MM revenues)	10%	Interest only for 2 years; rate equal to 10-year Treasury note plus 2.5%;	No
Entrepreneurial Minority Owned Businesses ($125 MM - $500 MM in revenues)	0	Interest only for 3 years; rate equal to 10 - year Treasury note;	Yes
Businesses Owned by Minorities and/or Women ($40 MM - $125 MM in revenues)	15%	Interest only for 3 years; rate equal to 10-year Treasury note;	Yes
Small Businesses Owned by Minorities and/or Women (less than $40 MM revenues)	25%	Interest only for 5 years; rate equal to 10-year treasury note;	Yes